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on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

ALLISON BOTELLO, an individual on behalf
of herself and all others similarly situated,

Plaintiff,

vs.

THE VICTUS GROUP, INC., a California
corporation; HOLIDAY INN EXPRESS &
SUITES CLOVIS, a business entity of
unknown form; and DOES 1 through 50,
inclusive,

Defendants.

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Superior Court of California
County of Fresno
By: Kenia Clemente, Deputy

Case No.: 24CECG00792

CLASS ACTION

Assigned for All Purposes To:
Hon. Jeffrey Y. Hamilton, Jr.
Dept.: 503

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Failure to Pay Reporting Time Pay;
4. Meal Period Liability Under Labor Code § 226.7;
5. Rest-Break Liability Under Labor Code § 226.7;
6. Violation of Labor Code § 226(a);
7. Violation of Labor Code § 203;
8. Violation of Labor Code § 204;
9. Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5;
10. Failure to Produce Requested Employment Records Under Labor Code §§ 226(b), 1198.5;
11. Failure to Reimburse Necessary Business Expenses § 2802;
12. Violation of Business & Professions Code § 17200 *et seq.*; and
13. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff ALLISON BOTELLO (“Plaintiff”) brings this action on behalf of herself
3 and the Class Members who are defined as “all current and former employees within the State of
4 California who, at any time from four (4) years prior to the filing of this lawsuit, are or were
5 employed as non-exempt hourly employees by Defendants THE VICTUS GROUP, INC., a
6 California corporation; HOLIDAY INN EXPRESS & SUITES CLOVIS, a business entity of
7 unknown form; and DOES 1 through 50” (all defendants being collectively referred to herein as
8 “Defendants”).

9 2. Plaintiff alleges that Defendants, and each of them, violated various provisions of
10 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the
11 California Business & Professions Code, and seeks redress for these violations.

12 3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared
13 similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3)
14 endured similar violations at the hands of Defendants as the other Class Members who served in
15 similar and related positions.

16 **THE PARTIES**

17 **A. The Plaintiff**

18 4. Plaintiff ALLISON BOTELLO resides in California, during the time period
19 relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within
20 the State of California.

21 **B. The Defendants**

22 5. Defendant THE VICTUS GROUP, INC., is a California corporation and is
23 registered with the California Secretary of State. Defendant THE VICTUS GROUP, INC., has
24 been the employer listed on the wage statements and employment records issued to Plaintiff
25 during the relevant time period that Plaintiff was employed with Defendants.

26 6. Defendant HOLIDAY INN EXPRESS & SUITES CLOVIS is a business entity of
27 unknown form and has been the employer listed on the wage statements and employment records
28 issued to Plaintiff during the relevant time period that Plaintiff was employed with Defendants.

7. The true names and capacities, whether individual, corporate, associate, or whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sue these Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when their identities become known.

8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Class Members. Defendants, and each of them, exercised control over the wages, hours or working conditions of Class Members, or suffered or permitted Class Members to work, or engaged, thereby creating a common law employment relationship, with Class Members. Therefore, Defendants, and each of them, employed or jointly employed Class Members.

9. Whenever and wherever reference is made in this Complaint to any act by a defendant or defendants, such allegations and references shall also be deemed to mean the acts and failures to act of each defendant acting individually, jointly, and severally.

10. Whenever and wherever reference is made to individuals who are not named as a Defendant in this Complaint but were agents, servants, employees and/or supervisors of Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope of their employment.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as a Class Action on behalf of similarly situated Class Members of Defendants pursuant to

1 California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial
2 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,
3 the obligations and liabilities giving rise to this lawsuit occurred in part in Fresno County.
4 Defendants maintain and operate facilities in Fresno County and employs Plaintiff and other Class
5 Members in Fresno County, while doing business throughout California.

6 **FACTUAL BACKGROUND**

7 12. Class Members consistently worked at Defendants behest without being paid all
8 wages due. Class Members were either not paid by Defendants for all hours worked or were not
9 paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that
10 Defendants failed to pay Class Members all wages due and owing, including by requiring off the
11 clock work, failing to provide sufficient compensation for on-call time, failing to incorporate non-
12 discretionary bonuses, commissions, and/or shift differentials into the regular rate of pay used to
13 calculate and pay for overtime pay, sick pay, and meal and rest break premiums, failing to pay for
14 reporting time pay, failing to provide meal and rest breaks, failing to furnish accurate wage
15 statements, failing to timely pay wages including final wages, failing to maintain accurate records,
16 failing to reimburse necessary business expenses all in violation of various provisions of the
17 California Labor Code and applicable Wage Orders.

18 13. During the course of Class Members' employment with Defendants, they were not
19 paid all wages they were owed, including for all work performed resulting in off the clock work.
20 Class Members were required to perform pre-shift and post-shift off the clock work which they
21 were not compensated for despite being subject to Defendants' control. Specifically, Class
22 Members were required to wait in line for several minutes before each shift waiting to access the
23 timekeeping system to clock in. Additionally, prior to each shift, Class Members were required to
24 spend several minutes responding to work demands at the hotel prior to clocking in. Moreover, for
25 several minutes after clocking out at the end of each shift, Class Members were required to
26 continue working and helping customers. Additionally, Defendants would also contact Class
27 Members on their personal cell phones with work demands outside of work hours, and Class
28 Members were required to answer and respond resulting in further off the clock work. Moreover,

1 Class Members were required to complete COVID-19 screenings which included answering a
2 questionnaire while they were off the clock.

3 14. Defendants also failed to pay Class Members all wages due and owing because
4 Defendants failed to incorporate non-discretionary, performance-based bonuses, commissions,
5 and/or shift differentials into the regular rate of pay. Contrary to the requirements of the Labor
6 Code and IWC Wage Orders under California law, Defendants did not incorporate these non-
7 discretionary bonuses, commissions, and/or shift differentials paid to the Class Members into the
8 regular rate of pay Defendants used to calculate and pay for overtime, sick pay, and meal and rest
9 break premiums.

10 15. Moreover, Defendant required Plaintiff and the Class Members to, on occasion,
11 report for a scheduled work day to be told whether work was available for them or not, and when
12 there was no work, Plaintiff and the Class members would be sent home. On such days when
13 Defendant required Plaintiff and the Class Members to report to work only to be sent home
14 because work was not available, they were not paid required reporting time wages for the hours
15 they waited without receiving their regular hourly rate of pay for them.

16 16. Defendants also failed to pay Class Members all wages due and owing because
17 Defendants failed to pay for on-call or standby time. Upon information and belief, Class Members
18 were also required to be on-call and were not compensated for on-call or standby pay.

19 17. By implementing policies, programs, practices, procedures and protocols which
20 resulted in off the clock work and failing to incorporate non-discretionary bonuses, commissions,
21 and/or shift differentials into the regular rate of pay, Defendants' willful actions resulted in the
22 systematic underpayment of wages to Class Members, including underpayment of overtime pay to
23 Class Members over the relevant time period. For example, the above described off the clock work
24 addressed above caused Plaintiff to begin receiving overtime pay later than they should have.

25 18. As a result of the above described requirements to work off the clock, the failure to
26 incorporate non-discretionary bonuses, commissions, and/or shift differentials into the regular rate
27 of pay, and the other wage violations they endured at Defendants' hands, Class Members were not
28 properly paid all wages earned and all wages owed to them by Defendants, including when

1 working more than eight (8) hours in any given day and/or more than forty (40) hours in any given
2 week.

3 19. As a result of Defendants' unlawful policies and practices, Class Members incurred
4 overtime hours worked for which they were not adequately and completely compensated, in
5 addition to the hours they were required to work off the clock. To the extent applicable,
6 Defendants also failed to pay Class Members at an overtime rate of 1.5 times the regular rate for
7 the first eight hours of the seventh consecutive work day in a week and overtime payments at the
8 rate of 2 times the regular rate for hours worked over eight (8) on the seventh consecutive work
9 day, as required under the Labor Code and applicable IWC Wage Orders.

10 20. Therefore, from at least four (4) years prior to the filing of this lawsuit and
11 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
12 Members for all hours worked, and failing to pay minimum wages for all time worked, as required
13 by California law. Defendants thus failed to pay Class Members at least minimum wages for all
14 the time they worked for Defendants in violation of the Labor Code and applicable IWC Wage
15 Orders as the actual times when Class Members were under the control and direction of
16 Defendants was under reported in the hours reflected on the timekeeping records. Furthermore,
17 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
18 including underpayment of overtime pay to Class Members over a period of time.

19 21. Therefore, from at least four (4) years prior to the filing of this lawsuit and
20 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
21 Members for all hours worked. Also, from at least four (4) years prior to the filing of this lawsuit
22 and continuing to the present, Defendants also had a consistent policy or practice of failing to pay
23 Class Members their true and correct overtime compensation at premium overtime rates for all
24 hours worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time
25 rates for all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510
26 and the corresponding sections of IWC Wage Orders.

27 22. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
28 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required

1 by the applicable Wage Order and Labor Code. Class Members were required to perform work as
2 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
3 without receiving a lawful and timely meal break. In addition to untimely meal periods,
4 Defendants also required Class Members to respond to work demands. Defendants placed their
5 needs over Class Members lawful meal and rest breaks and this resulted in Class Members often
6 having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened
7 ones, because the demands of the job would not avail them the opportunity to take a lawfully
8 uninterrupted and off duty meal and/or rest break.

9 23. On the occasions when Class Members worked over 10 hours in a shift, Defendants
10 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a
11 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid
12 meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by
13 Defendants' business records, or lack thereof. Defendants also failed to pay Class Members
14 "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for
15 each meal period or rest break that Defendants failed to provide or deficiently provided.

16 24. Therefore, for at least four years prior to the filing of this action and through to the
17 present, Defendants have regularly required Class Members to work shifts in excess of five (5)
18 hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes,
19 and shifts in excess of (10) hours without providing them with second meal periods of not less
20 than thirty minutes; nor did Defendants pay Class Members "premium pay," i.e. one hour of
21 wages at each Class Member's effective hourly rate of pay, for each meal period that Defendants
22 failed to provide or deficiently provided.

23 25. Meal period violations thus occurred in one or more of the following manners:

- 24 (a) Class Members were not provided full thirty-minute duty free meal periods
25 for work days in excess of five (5) hours and were not compensated one (1)
26 hour's wages in lieu thereof, all in violation of, among others, Labor Code
27 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
28 Order(s);

- (b) Class Members were not provided second full thirty-minute duty free meal periods for work days in excess of ten (10) hours;
- (c) Class Members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five (5) hours of continuous work during a shift; and
- (e) Class Members were restricted in their ability to take a full thirty-minute meal period.

26. Class Members were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one (1) hour's wages in lieu thereof. Class Members were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. To the extent Class Members were permitted to take rest breaks, they were prohibited from leaving the premises. Therefore, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have consistently failed to provide Class Members with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Class Members premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

27. Rest period violations therefore arose in one or more of the following manners:

- (a) Class Members were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- (b) Class Members were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and
- (c) Class Members were required to remain on-duty during rest periods or otherwise had their rest periods interrupted by work demands.

1 28. Defendants also consistently failed to issue accurate itemized wage statements as
2 required by Labor Code § 226(a). Specifically, the wage statements given to Class Members failed
3 to incorporate non-discretionary bonuses, commissions, and/or shift differentials into the regular
4 rate of pay used to calculate and pay overtime compensation, sick pay, and meal and rest break
5 premiums. Thus, the wage statements do not provide accurate hourly rates for overtime and the
6 statements do not comply with Labor Code § 226(a)(9). Moreover, the wage statements given to
7 Class Members failed to accurately account for unpaid wages and overtime because their actual
8 hours worked were under-reported due to off the clock work. Additionally, the wage statements
9 given to Class Members failed to accurately account for premium pay for deficiently provided
10 meal periods and rest breaks.

11 29. From at least four (4) years prior to filing this lawsuit and continuing to the present,
12 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class
13 Members at the time of their termination of within seventy-two (72) hours of their resignation, as
14 required by California wage-and-hour laws. Specifically, Class Members were not paid all regular
15 and overtime wages because Defendants failed to pay for all hours worked by requiring off the
16 clock work and failing to incorporate non-discretionary bonuses, commissions, and/or shift
17 differentials into the regular rate of pay used to calculate and pay for overtime, sick pay, and meal
18 and rest break premiums. Moreover, Defendants failed to pay premium wages owed for
19 unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants'
20 failure to pay said wages within the required time was willful within the meaning of Labor Code §
21 203.

22 30. Additionally, from at least four (4) years prior to the filing of this lawsuit and
23 continuing to the present, Defendants have regularly required Plaintiff to incur business expenses
24 in the course of performing her required job duties for Defendants including for cell phone
25 expenses and mileage. Upon information and belief, Class Members incurred similar costs. These
26 expenses incurred by Plaintiff and Class Members were necessary and required of them in
27 performing their assigned job duties, but Defendants failed to reimburse Class Members for all
28 such necessary expenditures, thus entitling them to reimbursement according to proof as required

1 under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

2 31. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
3 to the present, Defendants have had a consistent policy of denying Employees the right to inspect
4 and receive all of their payroll records, timecards, and personnel records.

5 32. Plaintiff also alleges that operations at Defendants' facilities allowed for the
6 presence and use of a stool or seat by the Class Members during the performance of their work
7 duties. The nature of the effected job positions can reasonably be accomplished while using a seat
8 or stool. California Labor Code § 1198 requires that "... the standard conditions of labor fixed by
9 the commission shall be the ... standard conditions of labor for employees. The employment of
10 any employee ... under conditions of labor prohibited by the order is unlawful." Paragraph
11 (14)(A) of the applicable IWC Wage Orders provides that "[a]ll working employees shall be
12 provided with suitable seats when the nature of the work reasonably permits the use of seats."
13 Paragraph 14(B) of the applicable IWC Wage Orders provides that "[w]hen employees are not
14 engaged in the active duties of their employment and the nature of the work requires standing, an
15 adequate number of suitable seats shall be placed in reasonable proximity to the work area and
16 employees shall be permitted to use such seats when it does not interfere with the performance of
17 their duties.

18 33. In violation of the applicable sections of the California Labor Code and the
19 requirements of the applicable IWC Wage Order, Defendants failed to provide Class Members
20 suitable seating when the nature of these employees' work reasonably permitted sitting.
21 Defendants knew or should have known that Class Members were entitled to suitable seating
22 and/or were entitled to sit when it did not interfere with the performance of their duties, and that
23 Defendants did not provide suitable seating and did not allow them to sit when it did not interfere
24 with the performance of their duties.

25 34. With their conduct, Defendants have violated California Labor Code § 1198 and
26 Paragraph 14 of the applicable IWC Wage Orders by failing to provide suitable seating to Class
27 Members. Defendants have violated the California Labor Code, including Section 1198, and
28 regulations promulgated thereunder as herein alleged, including Paragraph 14 of the applicable

IWC Wage Orders.

35. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226(b), 226.3, 226.7, 227.3, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2802, 2698 *et seq.*, and California Code of Regulations, Title 8, section 11000 *et seq.*

36. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff and the Class Members seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

37. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class Members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class Members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Reporting Time Pay Subclass. All Class Members who, within the applicable limitations period, were not paid reporting time pay.

d. Subclass 4. Meal Period Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Class Member's regular rate of pay in lieu thereof.

e. Subclass 5. Rest Break Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to authorize and permit Class Members to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Class Member's regular rate of pay in lieu thereof.

f. Subclass 6. Wage Statement Subclass. All Class Members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

g. Subclass 7. Termination Pay Subclass. All Class Members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

h. Subclass 8: Failure to Timely Pay Wages Twice Monthly Subclass. All Class Members who were subject to Defendants' policy and practice of not timely paying all wages earned when they were due and payable at least twice monthly.

i. Subclass 9. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

j. Subclass 10. Failure To Produce Requested Employment Records Subclass. All Class members who, within the applicable limitations period, were denied the right to inspect and receive all of their payroll records, timecards, and personnel records.

k. Subclass 11. Expense Reimbursement Subclass. All Class Members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendant and who were subject to a policy and/or practice under which such expenses were not reimbursed.

l. Subclass 12. UCL Subclass. All Class Members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

38. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class against Defendants, the Class Period should be adjusted accordingly.

39. Defendants, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendants failed to correctly calculate compensation for the time worked by Class Members, even though Defendants enjoyed the benefit of this work, required Class

Members to perform this work and permitted or suffered to permit this work. Defendants have uniformly denied these Class Members wages to which these employees are entitled and failed to authorize and permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

40. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in litigation and proposed class is easily ascertainable.

A. Numerosity

41. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class member has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within the State of California.

42. Accounting for employee turnover during the relevant time period increases this number substantially. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all Class Members.

B. Commonality

43. There are questions of law and fact common to the Class that predominates over any questions affecting only individual Class Members. These common questions of law and fact include:

- a. Whether Defendants failed to pay Class Members minimum wages;
- b. Whether Defendants failed to pay Class Members wages for all hours worked;
- c. Whether Defendants failed to pay Class Members overtime as required under Labor Code § 510;
- d. Whether Defendant failed to pay reporting time pay;
- e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Class Members with requisite meal periods or premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage

- 1 Orders, by failing to authorize and permit Class Members to take requisite rest
2 breaks or provide premium pay in lieu thereof;
- 3 g. Whether Defendants violated Labor Code § 226(a) by providing Class Members
4 with inaccurate wage statements;
- 5 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
6 wages and compensation due and owing at the time of termination of employment;
- 7 i. Whether Defendants' conduct was willful;
- 8 j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
9 Orders by failing to maintain accurate records of Class Members' earned wages and
10 work periods;
- 11 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all Class
12 Members during the relevant time period for all hours worked, whether regular or
13 overtime;
- 14 l. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- 15 m. Whether Defendants violated Labor Code § 2802 by failing to reimburse all
16 necessary business expenses Defendants required them to incur in performing their
17 job duties;
- 18 n. Whether Defendants violated Labor Code §§ 226 and 1198.5 by failing to produce
19 employment records and pay records;
- 20 o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 21 p. Whether Class Members are entitled to equitable relief pursuant to Business and
22 Professions Code § 17200 *et seq.*

23 **C. Typicality**

24 44. The claims of the named plaintiff is typical of those of Class Members. The Class
25 Members all sustained injuries and damages arising out of and caused by Defendants' common
26 course of conduct in violation of statutes, as well as regulations that have the force and effect of
27 law, as alleged herein.

28 **D. Adequacy of Representation**

1 45. Plaintiff will fairly and adequately represent and protect the interest of the Class
2 Members. Counsel who represents Class Members are experienced and competent in litigating
3 employment class actions.

4 **E. Superiority of Class Action**

5 46. A class action is superior to other available means for the fair and efficient
6 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
7 questions of law and fact common to all Class Members predominate over any questions affecting
8 only individual Class Members. Each Class Member has been damaged and is entitled to recovery
9 by reason of Defendants' illegal policies or practices of failing to compensate Class Members
10 properly.

11 47. As to the issues raised in this case, a class action is superior to all other methods for
12 the fair and efficient adjudication of this controversy, as joinder of all Class Members is
13 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
14 Members. Further, as the economic or other loss suffered by vast numbers of Class Members may
15 be relatively small, the expense and burden of individual actions makes it difficult for the Class
16 Members to individually redress the wrongs they have suffered. Moreover, in the event
17 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
18 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
19 managing this case as a class action, and proceeding on a class-wide basis will permit Class
20 Members to vindicate their rights for violations they endured which they would otherwise be
21 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to
22 them.

23 48. Class action treatment will allow those persons similarly situated to litigate their
24 claims in the manner that is most efficient and economical for the parties and the judicial system.
25 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
26 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would
27 set forth the subject and nature of the instant action. The Defendants' own business records can be
28 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent

1 that any further notice is required additional media and/or mailings can be used.

2 49. Defendants, as prospective and actual employers of the Class Members, had a
3 special fiduciary duty to disclose to prospective Class Members the true facts surrounding
4 Defendants' pay practices, policies and working conditions imposed upon Class Members as well
5 as the effect of any alleged arbitration agreements that may have been forced upon them. In
6 addition, Defendants knew they possessed special knowledge about pay practices and policies,
7 most notably intentionally refusing to pay for all hours actually worked which should have been
8 recorded in Defendants' pay records and the consequence of the alleged arbitration agreements
9 and policies and practices on Class Members.

10 50. Class Members did not discover the fact that they were entitled to all pay under the
11 Labor Code until shortly before the filing of this lawsuit nor was there ever any discussion about
12 Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury, right to collectively
13 organize and oppose unlawful pay practices under California law as well as obtain injunctive relief
14 preventing such practices from continuing. As a result, the applicable statutes of limitation were
15 tolled until such time as Plaintiff and the Class Members discovered their claims.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

18 **(Against All Defendants)**

19 51. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
20 full herein.

21 52. Defendants failed to pay Class Members minimum wages for all hours worked.
22 Defendants had a consistent policy of misstating Class Members' time records and failing to pay
23 Class Members for all hours worked. Class Members would work hours and not receive wages,
24 including as alleged above in connection with off the clock work. Additionally, Defendants failed
25 to incorporate non-discretionary bonuses, commissions, and/or shift differentials into the regular
26 rate of pay used to calculate and pay overtime. Defendants, and each of them, have intentionally
27 and improperly changed, adjusted and/or modified the hours of Class Members, which resulted in
28 off the clock work and underpayment of all wages owed to Class Members over a period of time,

1 while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to
2 pay minimum wages to Class Members, to their detriment. Additionally, Defendants had a
3 consistent policy of failing to pay Class Members for hours worked during alleged meal and rest
4 periods for which Class Members were consistently denied, as also addressed herein. Defendants'
5 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to
6 the Class as a whole, as a result of implementing a uniform policy and practice that denied
7 accurate compensation to Class Members as to minimum wage pay.

8 53. Defendants also failed to pay Class Members all wages due and owing because
9 Defendants failed to pay for on-call or standby time. Upon information and belief, Class Members
10 were also required to be on-call and were not compensated for on-call or standby pay.

11 54. In California, employees must be paid at least the then applicable state minimum
12 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
13 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
14 timely pay its employees for all hours worked. Defendants failed to do so.

15 55. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
16 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to
17 employees, and the payment of a less wage than the minimum so fixed is unlawful."

18 56. The applicable minimum wages fixed by the commission for work during the
19 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

20 57. The minimum wage provisions of California Labor Code are enforceable by private
21 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to
22 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
23 overtime compensation applicable to the employee is entitled to recover in a civil action the
24 unpaid balance of the full amount of this minimum wage or overtime compensation, including
25 interest thereon, reasonable attorney's fees and costs of suit."

26 58. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
27 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
28 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage

1 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
2 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
3 be used as a credit against a minimum wage obligation.

4 59. In committing these violations of the California Labor Code, Defendants
5 inaccurately recorded, or required Class Members to input times that did not reflect their actual
6 hours worked, or calculated the correct time worked and consequently underpaid the actual time
7 worked by Class Members. Defendants acted in an illegal attempt to avoid the payment of all
8 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
9 Commission requirements and other applicable laws and regulations. As a result of these
10 violations, Defendant also failed to timely pay all wages earned in accordance with California
11 Labor Code § 1194.

12 60. California Labor Code § 1194.2 also provides for the following remedies: “In any
13 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
14 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
15 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

16 61. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
17 1197.1, Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely
18 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
19 employee minimum wages.

20 62. Pursuant to California Labor Code § 1194.2, Class Members are further entitled to
21 recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

22 63. Defendants have the ability to pay minimum wages for all time worked and have
23 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
24 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Class Members.

25 64. Wherefore, Class Members are entitled to recover the unpaid minimum wages
26 (including double minimum wages), liquidated damages in an amount equal to the minimum
27 wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant
28 to California Labor Code § 1194(a). Plaintiff and the other members of the Class further request

1 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
2 assessment of any statutory penalties against Defendants, in a sum as provided by the California
3 Labor Code, including § 558, and/or other applicable statutes.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

6 **(Against All Defendants)**

7 65. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

9 66. California Labor Code § 1194 provides that “any employee receiving less than the
10 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
11 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
12 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action
13 may be maintained directly against the employer in an employee’s name without first filing a
14 claim with the Division of Labor Standards and Enforcement.

15 67. By their conduct, as set forth herein, Defendants violated California Labor Code §
16 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class
17 Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8)
18 hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours
19 worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for
20 hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of
21 eight (8) hours on any seventh day of work in a workweek.

22 68. Defendants had a consistent policy of not paying Class Members wages for all
23 hours worked, including by requiring off the clock work as addressed above. Additionally,
24 Defendants failed to incorporate non-discretionary bonuses, commissions, and/or shift differentials
25 into the regular rate of pay used to calculate and pay overtime. Therefore, Class Members were not
26 properly compensated, nor were they paid overtime rates for hours worked in excess of eight hours
27 in a given day, and/or forty hours in a given week. Based on information and belief, Defendants
28 did not make available to Class Members a reasonable protocol for correcting time records when

1 Class Members worked overtime hours or to fix incorrect time entries.

2 69. Defendants' failure to pay Class Members the unpaid balance of regular wages
3 owed and overtime compensation, as required by California law, violates the provisions of Labor
4 Code §§ 510 and 1198, and is therefore unlawful.

5 70. Additionally, Labor Code § 558(a) provides "any employer or other person acting
6 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
7 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
8 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
9 pay period for which the employee was underpaid in addition to an amount sufficient to recover
10 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
11 underpaid employee for each pay period for which the employee was underpaid in addition to an
12 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
13 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
14 this section are in addition to any other civil or criminal penalty provided by law." Defendants
15 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
16 Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor
17 Code § 558.

18 71. Defendants' failure to pay compensation in a timely fashion also constituted a
19 violation of California Labor Code § 204, which requires that all wages shall be paid
20 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
21 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
22 and overtime compensation earned by Class Members. Each such failure to make a timely
23 payment of compensation to Class Members constitutes a separate violation of California Labor
24 Code § 204.

25 72. Class Members have been damaged by these violations of California Labor Code
26 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

27 73. Consequently, pursuant to the California Labor Code, including Labor Code §§
28 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),

Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes.

THIRD CAUSE OF ACTION
FAILURE TO PAY REPORTING TIME PAY
(Against all Defendants)

74. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

75. Section 5(A) of the applicable Wage Order(s), requires that for "[E]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

76. As addressed in detail above, Defendants followed a uniform policy of failing to pay reporting time pay on in accordance with the applicable IWC Wage Order requirements. For example, Defendant required Plaintiff and the Class members to, on occasion, report for a scheduled work day to be told whether work was available for them or not, and when there was no work, Plaintiff and the Class members would be sent home after waiting for hours. On such days when Defendant required Plaintiff and the Class Members to report to work only to be sent home because work was not available, they were not paid required reporting time wages for the hours they waited without receiving their regular hourly rate of pay for them.

77. Plaintiff brings this claim for failure to pay reporting time pay as required by Section 5 of the applicable IWC Wage Orders pursuant to California Labor Code §1198, which instructs that: "the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

78. Reporting time pay constitutes wages that remain unpaid to Plaintiff and the Class members, despite the fact that they were required by Defendants to report for work and were under Defendants' control during these times and were unable to use their time for their own purposes. The failure to pay for reporting time pay is a violation of the California wage orders and is a failure to pay all wages owed, which is a violation of Labor Code §1198.

79. Under Section 20(A) of the applicable IWC Wage Orders, Plaintiff and the Class members are entitled to recover civil penalties, in addition to other penalties, for each underpaid Employee for violation of Section 5 of the IWC Wage Orders in the amount of \$50 for the initial violation and \$100 for subsequent violations during each relevant pay period when Defendants failed to pay reporting time pay. These reporting time pay violations also give rise to violations of Labor Code §§ 203, 226, and under the PAGA.

80. Accordingly, Plaintiff seeks to recover unpaid reporting time pay which Defendants failed to pay Plaintiff and the Class members pursuant to Sections 5(A) and 20(A) of the applicable IWC Wage Orders and civil penalties and attorneys' fees and costs as may be authorized.

FOURTH CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

81. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

82. Class Members regularly worked shifts greater than five (5) hours and in some instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of more than five (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second meal period of not less than thirty (30) minutes.

83. Defendants failed to provide Class Members with meal periods as required under the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this resulted in Class Members consistently having to work through their scheduled meal breaks

1 because the demands of the job would not avail them the opportunity to take a lawfully
2 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
3 when Class Members worked more than ten (10) hours in a given shift, they did so without
4 receiving a second uninterrupted thirty (30) minute meal period as required by law.

5 84. Defendants thus failed to provide Class Members with meal periods as required by
6 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
7 providing them late or for less than thirty (30) minutes, or by requiring them to perform work
8 during breaks.

9 85. Moreover, Defendants failed to compensate Class Members for each meal period
10 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of
11 the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee
12 a meal period in accordance with this section, the employer shall pay the employee one (1) hour of
13 pay at the employee's regular rate of compensation for each workday that the meal period is not
14 provided. Defendants failed to compensate Class Members for each meal period not provided or
15 inadequately provided, as required under Labor Code § 226.7.

16 86. Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,
17 paragraph 11, Class Members are entitled to damages in an amount equal to one (1) hour of wages
18 at their effective hourly rates of pay for each meal period not provided or deficiently provided, a
19 sum to be proven at trial, as well as the assessment of any statutory penalties against the
20 Defendants, and each of them, in a sum as provided by the Labor Code and other statutes.

21 **FIFTH CAUSE OF ACTION**

22 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

23 **(Against All Defendants)**

24 87. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 88. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
27 provide that employers must authorize and permit all employees to take rest periods at the rate of
28 ten (10) minutes net rest time per four (4) work hours.

1 89. Class Members consistently worked consecutive four (4) hour shifts and were
2 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to
3 authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC
4 Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for
5 each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely
6 rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants
7 placed their needs over Class Members lawful rest breaks and this resulted in Class Members
8 consistently having to work through their scheduled rest breaks because the demands of the job
9 would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break.
10 Additionally, to the extent Class Members were permitted to take rest breaks, they were prohibited
11 from leaving the premises. Thus, Class Members were consistently denied of their rest breaks.

12 90. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
13 provide that if an employer fails to provide an employee rest period in accordance with this
14 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
15 compensation for each workday that the rest period is not provided.

16 91. Defendants, and each of them, have therefore intentionally and improperly denied
17 rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of
18 the applicable IWC Wage Orders.

19 92. Defendants failed to authorize and permit Class Members to take rest periods, as
20 required by the Labor Code. Moreover, Defendants did not compensate Class Members with an
21 additional hour of pay at each Class Member's effective hourly rate for each day that Defendants
22 failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

23 93. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC
24 Wage Orders, Class Members are entitled to damages in an amount equal to one (1) hour of wages
25 at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to
26 be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each
27 of them, in a sum as provided by the Labor Code and/or other statutes.

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SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

94. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

95. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

96. Defendants failed to provide Class Members with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Class Members failed to incorporate non-discretionary bonuses, commissions, and/or shift differentials into the regular rate of pay used to calculate and pay overtime compensation, sick pay, and meal and rest break premiums. Thus, the wage statements do not provide accurate hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9). Moreover, the wage statements given to Class Members failed to accurately account for unpaid wages and overtime because their actual hours worked were under-reported due to off the clock work. Additionally, the wage statements given to Class Members failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

97. Throughout the liability period, Defendants intentionally failed to furnish to Class Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number

1 other than a social security number, (8) the name and address of the legal entity that is the
2 employer and (9) all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee pursuant to Labor Code § 226,
4 amongst other statutory requirements. Defendants knowingly and intentionally failed to provide
5 Class Members with such timely and accurate wage and hour statements.

6 98. Class Members suffered injury as a result of Defendants' knowing and intentional
7 failure to provide them with the accurate wage and hour statements as required by law and are
8 presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the
9 Defendants have failed to provide wage statements with accurate and complete information as
10 required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and Class
11 Members cannot promptly and easily determine from the wage statement alone one or more of the
12 following: (i) The amount of the gross wages or net wages paid to the employee during the pay
13 period or any of the other information required to be provided on the itemized wage statement
14 pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the
15 employer made from gross wages to determine the net wages paid to the employee during the pay
16 period, (iii) The name and address of the employer and, (iv) The name of the employee and only
17 the last four digits of his or her social security number or an employee identification number other
18 than a social security number. For purposes of Labor Code § 226(e) "promptly and easily
19 determine" means a reasonable person [i.e. an objective standard] would be able to readily
20 ascertain the information without reference to other documents or information.

21 99. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
22 § 226(a), Class Members suffered injuries, including among other things confusion over whether
23 they received all wages owed them, the difficulty and expense involved in reconstructing pay
24 records, and forcing them to make mathematical computations to analyze whether the wages paid
25 in fact compensated them correctly for all hours worked.

26 100. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable
27 IWC Wage Order, paragraph 7(B), Class Members are entitled to recover the greater of all actual
28 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one

1 hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
2 penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and
3 reasonable attorneys' fees.

4 **SEVENTH CAUSE OF ACTION**
5 **VIOLATION OF LABOR CODE § 203**
6 **(Against All Defendants)**

7 101. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set
8 forth in full herein.

9 102. Numerous Class Members are no longer employed by Defendants; they
10 either quit Defendants' employ or were fired therefrom.

11 103. Defendants failed to pay these Class Members all wages due and certain at
12 the time of termination or within seventy-two (72) hours of resignation.

13 104. The wages withheld from these Class Members by Defendants remained
14 due and owing for more than thirty (30) days from the date of separation from employment.

15 105. Defendants failed to pay Class Members without abatement, all wages as
16 defined by applicable California law. Specifically, Class Members were not paid all regular and
17 overtime wages because Defendants failed to pay for all hours worked by requiring off the clock
18 work and failing to incorporate non-discretionary bonuses, commissions, and/or shift differentials
19 into the regular rate of pay used to calculate and pay for overtime, sick pay, and meal and rest
20 break premiums. Moreover, Defendants failed to pay premium wages owed for unprovided meal
21 periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said
22 wages within the required time was willful within the meaning of Labor Code § 203.

23 106. Defendants' failure to pay wages, as alleged entitles these Class Members
24 to penalties under Labor Code § 203, which provides that an employee's wages shall continue
25 until paid for up to thirty (30) days from the date they were due.

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EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 204
(Against All Defendants)

107. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

108. Labor Code § 204 instructs that: “All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” As detailed above, Defendants maintained a consistently applied policy and practice of not paying all wages earned between the 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned between the 16th and the last day of the month between the 1st and 10th day of the following month. Defendants similarly failed to pay all wages earned by not more than seven calendar days following the close of the payroll period. These failures all arose from either Defendants’ failure to pay for all hours worked or failure to pay all earned commission wages.

109. All wages due and owing to Plaintiff and the Class Members, including as required under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in detail above. Additionally, wages required by Labor Code § 1194 and other sections became due and payable to each Class Member in each pay period that he or she was not provided with a rest period or paid straight or overtime wages or commissions to which he or she was entitled.

110. Defendants thus violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each employee, on the

1 established payday for the period involved, not less than the applicable minimum wage for all
2 hours worked in the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any
3 employee for longer hours than those fixed by the order or under conditions of labor prohibited by
4 the order is unlawful." Plaintiff and the Class Members may therefore pursue damages and
5 penalties for violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage
6 Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders.

7 111. As a result of the unlawful acts of Defendants, Plaintiff and Class Members
8 seek to represent they have been deprived of wages in amounts to be determined at trial, and they
9 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
10 costs, pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
11 applicable IWC Wage Orders.

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**
14 **AND 1174.5**

15 **(Against All Defendants)**

16 112. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set
17 forth in full herein.

18 113. California Labor Code § 1174 requires that all employers shall keep
19 accurate time and wage records for all employees. California Labor Code § 1174.5 further requires
20 that any employee suffering injury due to a willful violation of the aforementioned obligations
21 may seek damages, including civil penalties, from the employer.

22 114. During the course of Plaintiff's and Class Members' employment,
23 Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Class
24 Members as required by California Labor Code § 1174 by failing to pay Plaintiff and Class
25 Members proper wages, overtime, and premium pay as discussed above.

26 115. Accordingly, Defendants are liable for civil penalties pursuant to the
27 California Labor Code § 1174.5 for the three (3) years prior to the filing of this Complaint.

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1 **TENTH CAUSE OF ACTION**

2 **FAILURE TO PRODUCE REQUESTED RECORDS, LABOR CODE §§ 226 and 1198**

3 **(Against All Defendants)**

4 116. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set
5 forth in full herein.

6 117. Pursuant to California Labor Code § 226, current and former employees
7 have the right to inspect or receive a copy of their records pertaining to their employment, upon
8 reasonable request to their employer. Under this statute, an employer that receives a request to
9 inspect or receive a copy of records pertaining to a current or former employee must comply with
10 the request as soon as practicable, but no later than twenty-one calendar days from the date of the
11 request.

12 118. Pursuant to California Labor Code § 1198.5(a), every current and former
13 employee, or his or her representative, has the right to inspect and receive a copy of the personnel
14 records that the employer maintains relating to the employee's performance or to any grievance
15 concerning the employee. Under this statute, upon written request from a current or former
16 employee or his or her representative, an employer must make the contents of those personnel
17 records available for inspection or provide a copy of the personnel records to the current or former
18 employee, or his or her representative, not later than thirty calendar days from the date the
19 employer receives the written request, subject to some limited exceptions. Failure to comply with
20 these requests allows for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor
21 Code §§ 1198.5(k) and 226(f).

22 119. On October 26, 2023, Plaintiff sent written requests through her counsel to
23 Defendants for their payroll records, timecards, and personnel records. However, Plaintiff did not
24 receive the complete records until December 5, 2023, forty days after Plaintiff's request.

25 120. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to
26 timely produce the required records requested by Plaintiff.

27 121. On information and belief, Defendants' failure to provide Plaintiff with all
28 of her requested employment records is not an isolated incident, but was instead consistent with

Defendants' policy and practice that applied to Plaintiff and Employees.

122. Pursuant to California Labor Code § 1198.5, Plaintiff and Employees are entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

123. Pursuant to California Labor Code § 226(f), Plaintiff is entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost, and the other Class members similarly situated are similarly entitled.

ELEVENTH CAUSE OF ACTION
REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802
(Against All Defendants)

124. Plaintiff re-alleges and incorporates all preceding paragraphs as though set forth in full herein.

125. Under Labor Code § 2802(a) an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

126. Defendants have regularly required Plaintiff to incur business expenses in the course of performing her required job duties for Defendants including for cell phone expenses and mileage. Upon information and belief, Class Members incurred similar costs. These expenses incurred by Plaintiff and Class Members were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Class Members for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders, paragraph 9.

127. As a result of the unlawful acts of Defendants, Class Members have been deprived of reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

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1 TWELFTH CAUSE OF ACTION

2 VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.*

3 (Against All Defendants)

4 128. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set
5 forth in full herein.

6 129. Plaintiff, on behalf of herself, Class Members, and the general public,
7 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
8 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
9 harmful to Class Members and the general public. Plaintiff seeks to enforce important rights
10 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

11 130. Plaintiff is a “person” within the meaning of Business & Professions Code
12 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
13 relief, restitution, and other appropriate equitable relief.

14 131. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
15 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and
16 fraudulent in that Defendants’ policy and practice failed to provide the required amount of
17 compensation for missed rest breaks, and failed to adequately compensate Class Members for all
18 hours worked, due to systematic business practices as alleged herein that cannot be justified,
19 pursuant to the applicable California Labor Code and Industrial Welfare Commission
20 requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for
21 which this Court should issue injunctive and equitable relief, pursuant to California Business &
22 Professions Code § 17203, including restitution of wages wrongfully withheld.

23 132. Wage-and-hour laws express fundamental public policies. Paying
24 employees their wages and overtime, providing them with rest breaks, etc., are fundamental public
25 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
26 to enforce minimum labor standards, to ensure that employees are not required or permitted to
27 work under substandard and unlawful conditions, and to protect law-abiding employers and their
28 employees from competitors who lower costs to themselves by failing to comply with minimum

1 labor standards.

2 133. Defendants have violated statutes and public policies. Through the conduct
3 alleged in this Complaint Defendants have acted contrary to these public policies, have violated
4 specific provisions of the Labor Code, and have engaged in other unlawful and unfair business
5 practices in violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived
6 Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and
7 privileges guaranteed to all employees under the law.

8 134. Defendants' conduct, as alleged above, constitutes unfair competition in
9 violation of the Business & Professions Code § 17200 *et seq.*

10 135. Defendants, by engaging in the conduct herein alleged, by failing to pay
11 wages and overtime, failing to provide rest breaks, etc., either knew or in the exercise of
12 reasonable care should have known that their conduct was unlawful; therefore their conduct
13 violates the Business & Professions Code § 17200 *et seq.*

14 136. By the conduct alleged herein, Defendants have engaged and continue to
15 engage in a business practice which violates California and federal law, including but not limited
16 to, the applicable Industrial Wage Order(s), the California Code of Regulations, and the California
17 Labor Code including Sections 203, 204, 226, 226.7, 512, 1194, 1197, and 1198, for which this
18 Court should issue declaratory and other equitable relief pursuant to California Business &
19 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
20 constitute unfair competition, including restitution of wages wrongfully withheld.

21 137. As a proximate result of the above-mentioned acts of Defendants, Class
22 Members have been damaged, in a sum to be proven at trial.

23 138. Unless restrained by this Court Defendants will continue to engage in such
24 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
25 should make such orders or judgments, including the appointment of a receiver, as may be
26 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
27 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
28 disgorgement of such profits as may be necessary to restore Class Members to the money

Defendants have unlawfully failed to pay.

THIRTEENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 2698, ET SEQ.
(Against All Defendants)

139. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

140. Plaintiff and the Employees in the Class are also Class Members as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were or are employed by the alleged violators, Defendants (“Class Members”) during the relevant time period.

141. In failing to pay Class Members minimum wages and overtime, not providing proper meal and rest periods, failing to provide accurate wage statements, and failing to pay Employees upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Class Members wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Class Members, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders.

142. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699 for Defendants’ violation of Labor Code provisions included under Labor Code 2699.5, including the penalty provisions, without limitation, based, inter alia, on the following California Labor Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*

143. More specifically, after complying with the notice procedures of Labor Code § 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General and other similarly Class Members, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Class Members all earned

1 regular pay and minimum wages for regular hours worked and for failure to pay overtime
2 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
3 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
4 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
5 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
6 to Labor Code § 2699(g)(1);

7 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Class
8 Members off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
9 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
10 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
11 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
12 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
13 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
14 pursuant to Labor Code § 2699(g)(1);

15 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to
16 provide Plaintiff and Class Members with accurate, itemized wage statements and failure to
17 maintain employment records for Plaintiff and Class Members under Labor Code §§ 226, 1174,
18 and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all
19 civil and statutory penalties and wages available and applicable under Labor Code §§ 226.3,
20 558, 1174.5, 1199, 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for
21 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing
22 inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a),
23 Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3,
24 which in addition to other penalties provided by law, subjects Defendants to "a penalty in the
25 amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and
26 one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

27 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
28 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,

226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages, under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Failure to Reimburse Necessary Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections: For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

144. As also addressed above, Plaintiff, on behalf of the Class Members, also seeks the penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For any subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

145. Plaintiff has exhausted her administrative remedies by sending a certified letter to the LWDA and Defendants postmarked on **February 22, 2024**, addressing in detail the specific provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations and requested penalties. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed herein and in the PAGA Notice Letter and the original Complaint.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Class Members and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Class Members for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Class Members for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be proven;
8. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

1 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
2 for all class members in violation of Labor Code § 204, as may be proven;

3 10. For restitution and/or damages for all amounts unlawfully withheld from the wages
4 for all Class Members in violation of Labor Code § 2802, as may be proven;

5 11. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

6 12. For restitution for unfair competition pursuant to Business & Professions Code
7 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

8 13. For an order enjoining Defendants and their agents, servants, and employees, and
9 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
10 duties adumbrated in this Complaint;

11 14. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

12 15. For other wages and penalties under the Labor Code as may be proven;

13 16. For all general, special, and incidental damages as may be proven;

14 17. For an award of pre-judgment and post-judgment interest;

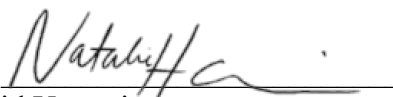
15 18. For an award providing for the payment of the costs of this suit;

16 19. For an award of attorneys' fees; and

17 20. For such other and further relief as this Court may deem proper and just.

18
19 DATED: May 7, 2024

D.LAW, INC.

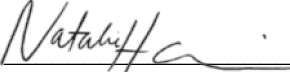
20
21 By: 
22 David Yeremian
23 Natalie Haritonian
24 Jonas Agle
25 Attorneys for Plaintiff ALLISON BOTELLO,
26 and all others similarly situated.
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: May 7, 2024

D.LAW, INC.

By: 
David Yeremian
Natalie Haritounian
Jonas Agle
Attorneys for Plaintiff ALLISON BOTELLO,
and all others similarly situated.

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

Arthur F. Silbergeld (CSB 81093)
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 Kacey R. Riccomini (CSB 292340)
kriccomini@thompsoncoburn.com
 Cara A. Strike (CSB 344467)
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 10100 Santa Monica Boulevard, Suite 500
 Los Angeles, CA 90067

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☐ **(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 7, 2024, at Glendale, California.

Katheryn Perez